Ontario

OFFICE OF THE WORKER ADVISER

ANNUAL REPORT

FOR THE PERIOD APRIL 1, 2006 TO MARCH 31, 2007

Office of the Worker Adviser
1300 – 123 Edward Street
Toronto, Ontario
M5G 1E2

SUBMISSION TO THE MINISTER OF LABOUR
June 28, 2007

OFFICE OF THE WORKER ADVISER (OWA)

2006-07 ANNUAL REPORT

TABLE OF CONTENTS

MESSAGE FROM THE DIRECTOR 1

INTRODUCTION AND BACKGROUND 3

MANDATE AND SERVICES 3

AN OVERVIEW OF OWA'S SERVICE DELIVERY 4

ACHIEVEMENTS IN KEY ACTIVITIES 4

(1) ADVISORY SERVICES 4
Determination of Cases for Which OWA Provides Representation 6
(2) REPRESENTATION SERVICES 7
OWA's Case Management Approach 7
Waiting List For Appeal Level Representation Services 8
Case Closure Rate 8
The Appeals System and OWA's Role 9
a) Early & Alternative Dispute Resolution Initiatives 9
b) Central Client Services Unit 10
(3) EDUCATIONAL SERVICES 12
Highlights of Educational Sessions 13

OTHER KEY ACTIVITIES IN 2006-07 13

(1) SYSTEM AND COMMUNITY PARTNERSHIPS 13
Formal Policy and/or Law Reform Submissions in 2006-07 15
System and Community Partnership Committees and Activities 15
(2) OWA TRANSFER PAYMENT PROGRAM 16
(3) TECHNOLOGY AND INFORMATION MANAGEMENT IN SUPPORT OF CLIENT SERVICES 17

APPENDIX A – OUTCOME PERFORMANCE MEASURE 18

APPENDIX B – INTERNAL PROGRAM PERFORMANCE ACHIEVEMENTS 19

APPENDIX C – FINANCIAL REPORT FOR ANNUAL REPORT – FISCAL YEAR 2006/2007 20

APPENDIX D - OWA OFFICE LOCATIONS 21

APPENDIX E - ORGANIZATION CHART 22

MESSAGE FROM THE DIRECTOR

In June 2006, the Office of the Worker Adviser had marked more than 20 years of advising, educating and representing injured workers in Ontario at our Learning Conference in Guelph. We were honoured to have the Minister of Labour, Steve Peters open our conference and the Deputy Minister, Virginia West, close it. This was the first occasion in more than half a decade that OWA staff were once again able to become acquainted with one another. It also gave us a chance to provide additional training in issues relating to Canada Pension Plan Disability benefits and the FAIR Partnership, areas which enable the OWA to better assist the most vulnerable injured workers and their survivors. In addition, the staff had an opportunity to discuss with the then Chief of Corporate Services, John Slinger, and other WSIB officials, the status of the Adjudication Support documents intended to guide WSIB decision making. The Learning Conference enabled many of us, particularly those who have been with the organization from the beginning, to face the future with renewed energy.

Since our inception in 1985, we have had more injured workers and survivors requesting our help than we've had the capacity to assist. As a result, we have been compelled to evaluate the likelihood of success in every case that comes to us, a process we call case review. In situations where we find it necessary to tell the worker that their case is not likely to succeed in an appeal, the OWA staff advise the worker, in writing, what evidence is required to pursue the case. In a survey conducted in 2006 we found that more than 25 percent of the people who were told that they did not have a case eventually come back to OWA with the additional evidence we advised them to secure.

We represent injured workers with 4,500 to 5,000 appeal issues every year. Over our twenty years of existence this means that we have secured appeal decisions on about 100,000 issues. This represents a great deal of collective wisdom in workers' compensation matters. Although we do not win every case, our success rate is good. In the fiscal year 2006-07, 56 percent of our cases before the Appeals Resolution Officer level at WSIB, and 73 percent of our cases before the Workplace Safety and Insurance Appeals Tribunal (WSIAT) were allowed in full or in part. Samples of the varied decisions we have won over the years can be reviewed by going to our website at http://www.owa.gov.on.ca/decisions.

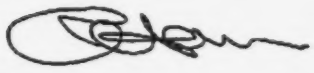
With every passing year we find that our cases are becoming increasingly more complex, particularly those involving occupational disease. OWA staff continued to represent workers and survivors in cases emanating from occupational disease clusters in Elliot Lake and Sarnia. The OWA has also been approached to assist with emerging disease clusters involving rubber workers in the Kitchener-Waterloo area, electrical workers in Peterborough and workers employed on a construction project in Dryden, Ontario.

These cases are proceeding through the initial adjudication very slowly, but we anticipate that quite a number of them will require appeals in the coming year. We provided some injured workers with the capacity to appeal less complex issues on their own, with the aid of our website as a resource. The OWA Website contains over 40 fact sheets, ranging in topics from how to access a copy of a WSIB file to how to craft a submission in a workplace safety and insurance appeal. It contains a Glossary of Terms which explains some of the language used in workplace insurance matters. In addition, it also provides direct links to the *Workplace Safety and Insurance Act* and WSIB policy.

I encourage everyone with an interest in Workplace Safety and Insurance issues from the workers' perspective, to add the OWA Website link at http://www.owa.gov.on.ca to their list of Favourites.

The Office of the Worker Adviser continued to work with its system and community partners on additional WSIB Best Practices. We made submissions to WSIB on its draft return to work policy and to the Law Society on the proposed paralegal regulations. We continued to provide feedback to the Workplace Safety and Appeals Tribunal as a member of its advisory group. We participated in a number of events hosted by injured workers groups and the Threads of Life support group. We provided assistance to worker stakeholders in focusing some of their legislative reform issues. Our involvement with them has been enriching.

I would like to thank our community and system partners for engaging with us, and our staff for their dedication and achievements.



Jorma Halonen
Director

INTRODUCTION AND BACKGROUND

The Office of the Worker Adviser ("OWA") was established in 1985, under the *Workers' Compensation Act* as a branch of the Ministry of Labour (the "Ministry") as an advocacy service for injured workers. In 1992, the OWA (along with the Office of the Employer Adviser) became an agency of the Ministry of Labour.

The Director of the Office of the Worker Adviser is an Order-in–Council appointment by the Minister of Labour. The Director's appointment is effective from April 3, 2006 through to April 2, 2009. The memorandum of understanding between the OWA and the Minister of Labour (the "Minister") provides that the Director of the OWA will report to the Minister annually. This report covers the fiscal year ending March 31, 2007.

MANDATE AND SERVICES

The OWA's mandate, established by s. 176(1) of the *Workplace Safety and Insurance Act, 1997* (the "Act"), is "to educate, advise and represent workers who are not members of a trade union and their survivors".

OWA's Vision is:

- To be a leader in advice, representation and education on workplace insurance on behalf of the most vulnerable injured workers and their survivors;
- To provide a vital public service that contributes to the effective functioning of Ontario's workplace insurance system and supports a healthy workforce in a strong, vibrant provincial economy; and,
- To contribute to improvements to workplace safety and insurance through community and system partnerships.

In all of its work, the OWA puts a high priority on participating in and promoting improvements to the functioning of the workplace safety and insurance system. Over 88% of former OWA clients surveyed in 2006-07 expressed that they were 'very satisfied' with the overall service they had received from the OWA.

Comments received from clients over the past year included:

- "I was very thankful that there is a service that one can turn to in a time of need."
- "I really do not think the outcome would have been the same without your office's help."
- "Keep up the 'Great Work'. I felt alone. Your staff was the answer. Thanks again."
- "Maybe a website where people could login and have access to their files or questions directly to their representative."
- "I want to express how important this program is and hope that it remains available in the future."
- "… I wish I was better with words as I don't think I have fully stated my admiration for my advisor and the job he does. All too often we only hear the negatives about public service workers."
- « Bien important d'avoir un bon représentatif pour mieux se comprendre. »
- "There are no words to describe my satisfaction with the OWA. Even had the appeal been lost my representative was the best."

The following excerpt is from a person who, in spite of her difficulty in communicating in English, took the time to write a letter of thanks:

> "This lady (the worker adviser) works over year. On my problem very hard, almost I believe every day. Until my fill resulted very good way and W.S.I.B. Understood they were wrong…Thank you to you, that you have this kind Worker Adviser in your office, we need them, Canada need's …."

AN OVERVIEW OF OWA'S SERVICE DELIVERY

OWA's service delivery model focuses resources on initial advice and on representation services:

- Program Assistants have been trained to provide basic information/advice to all injured workers who call OWA for help. They refer to the OWA Website as an integral tool to provide comprehensive self-help information to injured workers.
- Intake Counsellors provide advice in pressing cases and representation in single-issue cases.
- Worker Advisers provide representation services in the more complex cases.

Along with refocusing its service delivery model and increasing the use of technology, the OWA continues to focus resources on those appeals most needing OWA representation. In spite of very stringent criteria for selecting cases for representation, OWA's representation backlog increased from 145 cases in March 2006 to 154 cases in March, 2007. This reflected the fact that the demand for representation services exceeded the capacity of OWA staffing levels.

Many of OWA's clients have significant disabilities, which makes it difficult to travel long distances to meet OWA staff when telephone contact is insufficient. These clients also face severe financial hardship, which limits their ability to travel. In order to make our services as accessible as possible, the OWA holds injured worker clinics in communities where there is no OWA office.

In 2006-07, OWA staff visited Brantford, Barrie, Belleville, Brampton, Kingston, Napanee, Nepean, North Bay, Orangeville, Oshawa, Pembroke and Peterborough. We have a satellite office in Sarnia to deal with occupational disease case clusters. Through these outreach activities, OWA has successfully increased its accessibility, allowing disabled workers to meet with OWA staff individually and close to their home communities, instead of having to travel to more distant locations. In addition to serving individual clients, OWA continues to build partnerships and referral relationships with MPPs and key organizations in local communities.

ACHIEVEMENTS IN KEY ACTIVITIES

(1) ADVISORY SERVICES

In many situations, with appropriate information or advice, injured workers are able to handle their workplace insurance issues on their own. If OWA can help injured workers become more self-sufficient, then staff resources can be assigned to the provision of representation services to clients whose cases are more complex.

For some injured workers, information available on the OWA Website will be sufficient. In other situations, these workers will need more customized advisory services from OWA staff. Overall, to encourage self-reliance, workers or their survivors who contact the OWA are initially provided with advisory services.

The main components of advisory services are summary advice and assistance. Summary advice consists of basic information and advice that the client can then use in dealing directly with the Board or the employer. Assistance is help that does not include representation – for example, helping the client draft his/her own letters to the Board.

Many non-unionized injured workers are vulnerable due to a combination of factors such as low education levels, lack of English language skills, and the stresses of unemployment and disability. As a result, it is important that advisory services be targeted at clients who are truly capable of self-reliance and that representation services are available to those who need them.

In 2006-07, OWA assisted 81% of incoming injured workers through advisory services and 19% with representation (see Table 1). The percent assisted by some form of intervention has declined over the past several years. Factors contributing to this include the growth in new requests for service; increase in the overall complexity of OWA's caseload which reduces the number of representation cases a Worker Adviser can handle; and the discontinuance of early intervention without securing a copy of the WSIB claim, which was an approach to initial appeals with very limited success.

OWA's overall workload and effectiveness is indicated by the number of different clients served during the fiscal year. In 2006-07, OWA assisted 13,522 different injured workers – down by 5% from 2005-06 levels.

Analysis of these numbers indicates an increase in multiple requests for advisory service. This may mean that some injured workers may be facing challenges in self-reliance and returning to the OWA on more than one occasion.

The OWA supplements its advisory services with publications that are written specifically for injured workers. These fact sheets can be provided in paper form (in French and English) or can be downloaded from the OWA Website. In the past year, on average, each month more than 5000 different people visited the OWA website, and downloaded, on average, more than 1000 self-help documents per month. The website also contains a glossary of compensation terms, all forms needed for appeals, street maps to OWA offices, clinic times and locations, answers to frequently asked questions, and a direct link to contact us through e-mail inquires.

Analysis of Incoming Workload

Figure 1: Analysis of Incoming Workload

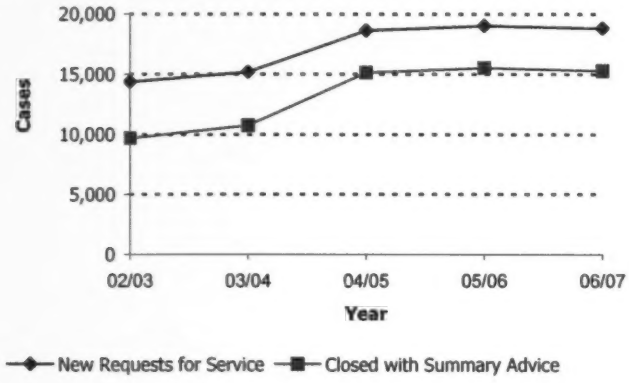


Table 1(a): Analysis of Incoming Workload

Incoming Workload	02-03	03-04	04-05	05-06	06-07	% Change 05-06 to 06-07
New Requests for Service	14,363	15,182	18,641	19,034	18,792	-1%
Closed with Summary Advice	9,699	10,724	15,144	15,518	15,279	-2%
% Closed with Summary Advice	68%	71%	81%	82%	81%	-1%
% Active Intervention Provided Beyond SA	32%	29%	19%	18%	19%	1%
# of Individual Clients Helped	11,603	15,570	14,841	14,198	13,522	-5%

Determination of Cases for Which OWA Provides Representation

OWA's policy on which cases OWA would provide representation was developed to help OWA deal with the increasing demand for services. The objective of case selection is to focus resources on the cases most in need of OWA services.

Through 'case review', the evidence and legal arguments available to substantiate an appeal are evaluated. Cases are not taken to appeal unless there is a significant likelihood of success. The threshold requirement in selecting a case for representation is where a minimum of 8 weeks of benefits are at stake.

Table 1(b): Case Selected Out Where Only Advisory Services Provided

Cases Selected Out	02-03	03-04	04-05	05-06	06-07
Total Incoming Cases (New Requests for Service)	14,363	15,182	18,641	19,034	18,792
Cases Selected Out	760	851	1,331	1,178	1,152
% of total incoming cases	5%	6%	7%	6%	6%

Case Review Selection:

In all cases considered for OWA representation, a Worker Adviser reviews the injured worker's Board file, any new evidence, the submissions made by Intake Counsellors, and the most recent reasons for denial received from the Board. All reasonable avenues for finding additional evidence must also be considered. If the Worker Adviser concludes that there is not a significant chance of success, the reasons for this decision are then explained to the injured worker and confirmed in writing. If the injured worker can provide additional information, which could support an appeal with a significant chance of success, the OWA will revisit its decision. Cases do not need to be "guaranteed winners" to be approved for appeal level representation, but at the same time there must be reasonable evidence or argument which gives the appeal a significant chance of success.

In 2006-07, the OWA selected out 1,152 cases, 6% its incoming cases (the same as in 2005-06). This highlights the OWA's ongoing commitment to divert cases where there is no significant evidence for success from the appeals system; however, it also raises the concern that this approach may be overly stringent.

(2) REPRESENTATION SERVICES

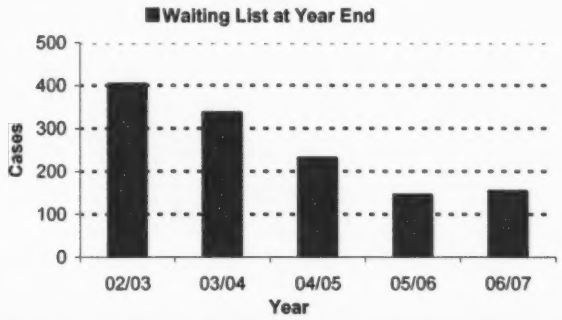
OWA's Case Management Approach

OWA's approach to case management is to support the injured worker in resolving the dispute directly with the employer or the Board. In the majority of new requests, a Program Assistant or Intake Counsellor provides this support to the worker through summary advice or assistance. There remain complex cases that cannot be resolved through advice or by early intervention. In these situations, Worker Advisers provide representation services at all levels of the adjudication and appeal process within the workplace insurance system. The representation file is closed when a satisfactory resolution of the case has been obtained, or when it is determined that there is no merit in continuing, or when the worker's appeal rights have been exhausted.

Waiting List For Appeal Level Representation Services

As of March 31, 2007, OWA's waiting list rose by 6% to 154 cases. In spite of the waiting list, 89% of appeals were commenced within 120 days of being reviewed. The average age of files on the waiting list has been five months or less.

Table & Figure 2: Waiting List at Year End



OWA Waiting List	02-03	03-04	04-05	05-06	06-07	% change from 05-06 to 06-07
Waiting List at Year End	404	337	231	145	154	6%

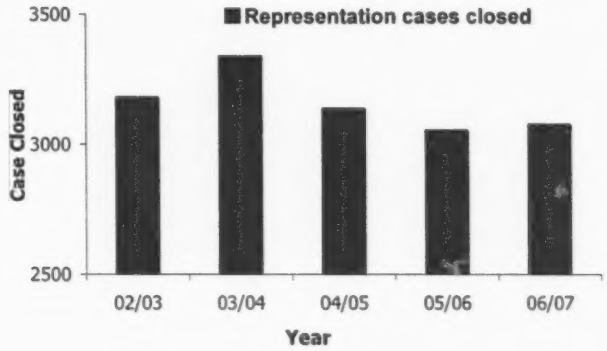
Case Closure Rate

The case closure rate is a measure of OWA's capacity to manage its workload. Overall, the more cases closed, the more workers OWA can help, the faster their cases can be resolved and the shorter the waiting list becomes. There are other variables, especially the number of actual Worker Adviser staff available in any given year; the number of new incoming cases; and, the proportion of files closed by case review, early intervention and full representation.

The emerging factor affecting the case closure rate is the increasing case complexity, not only of appeals in general, but of OWA cases in particular. This is partly a result of stringent case selection procedures with OWA selecting the more complex cases to provide representation services, as well as the fact that OWA inherits complex cases abandoned by Fee-for-Service Consultants. In addition, occupational disease cases of former unionized workers and their survivors who no longer have representation are coming to the OWA for representation.

OWA's case closure measure, reported in Table/Figure 3, includes both early resolution and full representation cases, as well as cases diverted from the appeals system through case review. OWA closed 3,075 representation cases in 2006-07.

Figure 3 & Table 3: OWA Representation Cases Closed



OWA Representation	02-03	03-04	04-05	05-06	06-07
Representation cases closed	3,179	3,443	3,135	3,052	3,075

The Appeals System and OWA's Role

OWA represents more injured workers than any other single organization. This means that OWA has a vital stake in helping improve dispute resolution and avoiding future backlogs and system overload.

a) Early & Alternative Dispute Resolution Initiatives

The volume of cases in the appeals system and their frequently complex nature have focused strategies for all of the system partners on trying to divert simpler cases from proceeding to full formal hearings. This has meant that the use of early or alternative dispute resolution (EDR and ADR) continues to be an important aspect of OWA work. However, complex cases are not amenable to EDR/ADR and it is likely that the percent of cases that the OWA can resolve by these methods will continue to decline, corresponding to the increase in the number of complex cases being represented by OWA, as indicated in Table 4.

EDR/ADR includes efforts at early dispute resolution with the employer and the operating level of the Board as well as mediation and other non-hearing dispute resolution techniques at the appeals levels.

Occasionally ADR techniques such as agreed statements of facts or focusing the issue agenda, can streamline the appeals process even when part of the disputed issue resolution must still be done by a hearing.

In terms of overall numbers, in 2006-07, OWA staff obtained a total of 3,000 decisions from the adjudication and appeals levels of the Board and from the Tribunal.

Table 4: Decisions by Level

Decisions by level & use of Early or Alternative Dispute Resolution	04-05			05-06			06-07		
	Total Decisions	# by EDR/ ADR	% by EDR/ ADR	Total Decisions	# by EDR/ ADR	% by EDR/ ADR	Total Decisions	# by EDR/ ADR	% by EDR/ ADR
WSIB – Operating Level	1,568	1,568	100%	1,727	1,727	100%	1,619	1,619	100%
WSIB – Appeal Level	901	444	49%	1,048	471	45%	962	537	56%
WSIAT	396	129	33%	409	121	30%	419	114	27%
TOTAL Decisions from all Levels	2,865	2,141	75%	3,184	2319	73%	3,000	2,270	76%

b) Central Client Services Unit

Central Client Services Unit Responsibilities:

OWA's Central Client Services Unit (CCSU) has responsibility for central services relating to:

- advice and assistance to the OWA
- representation and advice to OWA staff in legally complex and/or precedent setting cases
- system improvement initiatives
- education materials and sessions for OWA staff and other representatives
- education materials for the public

In addition, CCSU provides legal support for the OWA's two pilot projects to expand the services OWA provides to severely injured workers (CPP-D pilot) and survivors of workers whose death results from a traumatic workplace fatality (FAIR Partnership).

The General Counsel/Manager CCSU and three Legislative Interpretation Specialists (LIS) carry out CCSU's role. In the areas of advice and representation, CCSU duties include: assisting Worker Advisers with legal issues in their casework, direct handling of, or co-counselling with Worker Advisers in, legally complex and precedent setting cases.

The following is a review of significant casework performed by CCSU in 2006-07:

Occupational Disease: CCSU continued to provide legal and strategic support in a number of individual cancer cases. This included written submissions to the Appeals Tribunal and legal and strategic advice through numerous case consultations.

Apportionment in Chronic Obstructive Pulmonary Disease (COPD: In 2005-06, CCSU worked with counsel from a community legal clinic on an important COPD case, which resulted in *Decision No. 865/92R4*. The issue was whether apportionment between dust and smoking was permissible in COPD cases.

The Vice-Chair found that benefits could not be apportioned "where there are essentially two co-existent factors causing simultaneous and indistinguishable injury to the worker's lungs". The Board's practice in this regard is of great concern to the worker community in that it is seen as a dangerous precedent that could be expanded to allow for apportionment for smoking in other multi-factorial disease cases such as lung cancer. In partnership with other worker stakeholders in 2006-07, CCSU continued its work on this issue to build a body of case law based on the success in *Decision No. 865/92R4*. CCSU expects several decisions to be released on this issue in 2007-08.

Hand Arm Vibration Syndrome (HAVS): In 2005-06, CCSU wrote extensive legal submissions in a case dealing with the method used by the Board to determine non-economic loss (NEL) ratings for HAVS cases. It was argued that the Board's policy on rating permanent impairment for HAVS, OPM Document No. 04-03-02, is not in accordance with the prescribed rating schedule, the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, third edition revised. Consequently, the policy is inconsistent with and not authorized by the Act. While the AMA Guides require that all three component impairments of HAVS (vascular, neurological and musculoskeletal) be assessed, the Board policy does not. In 2006/07, in response to submissions from Tribunal Counsel, CCSU prepared reply submissions in this case. As of the end of March 31, 2006, it was not clear whether the policy in question would be referred back to the Board under s. 126(4) of the Act, which requires the Tribunal to do so before making a decision if it finds that a policy is inconsistent with or not authorized by the *Act* or does not apply to the case. This appeal represents the first of a group of cases that raise similar issues.

Mental Stress: CCSU provided legal support and drafted notices of constitutional question in a number of mental stress cases, in which it will be argued that the restriction on entitlement under s. 13(4) and (5) of the *Workplace Safety and Insurance Act, 1997* is discriminatory and violates the equality provisions of the *Charter of Rights and Freedoms*. As similar arguments are available under the *Ontario Human Rights Code*, CCSU explored to the viability of raising *Code* arguments in the mental stress cases as well.

Age Discrimination: In consultation with a community legal clinic, CCSU conducted an extensive review of a possible age discrimination case. The worker was seriously injured in a workplace accident at the age of 66 and subsequently had his leg amputated. In accordance with s. 43(1)(c) of the *Act*, the Board terminated the worker's loss of earnings benefits two years after the accident, though the worker continued to be disabled as a result of the workplace injury. CCSU recommended that OWA should represent the worker to test the argument that the age cut -off for older workers is discriminatory and violates the equality provisions of the *Charter of Rights and Freedoms*. CCSU reviewed several other age discrimination cases for possible representation.

Retroactivity of Board Policy on Integration of Canada Pension Plan Disability (CPP-D) Benefits with Workers' Compensation/Workplace Insurance Benefits: With the introduction of its policy, "Calculating CPP/QPP Offsets from FEL/LOE Benefits" (offset policy), the Board essentially ended its practice of integrating CPP-D benefits with partial future economic loss (FEL) and loss of earnings (LOE) benefits. This practice, which was in place from 1996 until the release of the offset policy in 2005, resulted in the under-compensation of many seriously disabled workers.

Although the Board acknowledged that workers had been under-compensated, it, nevertheless, chose January 1, 2004 as the application date for the offset policy, leaving workers affected by the Board's practice between 1996 and January 1, 2004 without a remedy for their loss. In 2006-07, CCSU wrote generic legal submissions, which argue for an application date back to 1996. A decision is expected from the Appeals Tribunal in at least one case and numerous other cases on this issue should be heard in 2007-08. This is an important systemic issue for a vulnerable group of permanently disabled workers.

Lock-in of Wage Loss Benefits after 72 Months from the Date of Injury: CCSU answered a significant number of inquiries from OWA staff and from outside representatives regarding the legislative "lock-in" of wage loss benefits after the final review. For loss of earnings (LOE) benefits, the final review occurs at 72 months after the date of injury. For future economic loss (FEL) benefits, it occurs 60 months after the first FEL determination, usually approximately 12 months after the injury. Except in certain very specific circumstances, s. 44 of the *Act* prohibits the Board from reviewing a worker's wage loss benefits after the final review. This rigid rule has resulted in many workers being under-compensated or not compensated at all for wage loss directly related to their workplace injuries. For workers whose final review occurred between January 1, 1998 (when the *WSIA* came into effect) and November 26, 2002 (when the Bill 179 amendments to the *Act* came into effect), there is no exception to the "no-review" rule that could assist workers. The Bill 179 amendments added two exceptions, which assisted some workers but not others. CCSU provided legal assistance in a number of cases in which it was possible through creative argument to avoid the negative affects of the no-review rule on the facts of the particular cases. In many cases, however, it is not possible to avoid the rule and workers were left with inadequate or no compensation.

Time Limits: CCSU continued to provide significant support to individual staff and to the agency on issues related to statutory time limits. This included extensive review of a number of cases, tracking OWA cases involving missed time limits and analyzing and reporting on OWA experience.

(3) EDUCATIONAL SERVICES

The OWA provides education services to injured workers through information sessions held in communities across the province and through provision of general information from the OWA Website, which contains a comprehensive collection of fact sheets, kits and frequently asked questions on workplace safety and insurance topics.

During 2006-07, the OWA held 162 educational sessions, including information sessions and self-help clinics for injured workers, in communities throughout the province. The majority of the information sessions focused on the workplace insurance system especially as it relates to injured workers. In addition, the OWA provides higher-level education services to community and system partners and representatives who work in the field of workers' compensation.

Highlights of Educational Sessions

CAW 2006 Workers' Compensation Conference, October 27-29, 2006: The 2006 conference had a national focus. Together with a representative from a community legal clinic and the CAW representative speaking on the Ontario workers' compensation system, the OWA General Counsel assisted in developing the Ontario presentation and acted as a resource person for the conference.

Lancaster House Workplace Safety and Insurance Conference, 2006: The OWA General Counsel participated in a panel discussion on "What's Compensable and Who's Covered", which covered issues such as entitlement for various multi-casual conditions including occupational diseases, chronic pain and chronic mental stress.

Ontario Federation of Labour's Occupational Disability Response Team Training Session on Occupational Disease: An OWA Worker Adviser from the Elliot Lake office who assisted with the development of this course in 05/06, co-presented the second first full run of this intensive six day course. The course covers topics ranging from the history of occupational disease to how to argue a complex occupational disease case at the Appeals Tribunal level.

Workplace Safety and Insurance Appeals Tribunal (WSIAT) Training: This training was for WSIAT vice-chairs, side members and legal staff. CCSU gave a presentation on how to deal with unrepresented workers with mental health issues.

OWA Learning Conference, June 2006: Marking the 20th anniversary of OWA, staff came together for a learning conference where CCSU, Management and System Partners provided training in issues relating to Canada Pension Plan Disability benefits and the FAIR partnership, areas which enable the OWA to better assist the most vulnerable injured workers and their survivors. In addition, the staff had an opportunity to discuss with the then Chief of Corporate Services, John Slinger, and other WSIB officials, the status of the Adjudication Support documents intended to guide WSIB decision making.

OTHER KEY ACTIVITIES IN 2006-07

(1) SYSTEM AND COMMUNITY PARTNERSHIPS

Worker Stakeholder Meetings with the Board

In 2006-07, the OWA continued to play an important role in formal Worker Stakeholder Meetings between the worker community and the Chair of the Board and the Board senior management team. These meetings allow the Board to present on issues where important changes are occurring (e.g. policy and/or process development) and to receive input from worker stakeholders. In July 2006, the OWA joined with other representatives from the worker community and leaders from the injured workers community to bring forward to the new Chair of the Board key concerns regarding urgently needed legislative and system reform. In January 2007, the OWA participated in the Board meeting with worker stakeholders regarding its draft early and safe return to work (ESRTW) policies.

WSIB Best Practices Working Group

A number of OWA staff along with other worker-side representatives work with senior Board staff to come up with agreed statements of principles regarding the adjudication of claims. The statement of principles documents are then converted by the Board into training documents referred to as "Best Approaches Guides". These documents are aimed at improving the fairness and consistency of Board decision making, generally, and with respect to specific issues.

Building on the success of this process in 2005-06, in which six guides were developed and posted on the Board's website, in 2006-07 the OWA participated in a number of subcommittees of the WSIB Best Practices Working Group, to look at a number of more complex issues. These included subcommittees to address the following issues/areas of concern:

- Adjudication under the "Traumatic Mental Stress" policy
- Return to work of injured workers and work refusals under the *Occupational Health and Safety Act*
- Adjudication under the Board Serious Injury Program

WSIB Best Practices Steering Committee

The OWA Director sits on this committee, which is comprised of a small number of key worker-side representatives and senior Board staff who work together to determine the issues to be referred to the Best Practices Working Group, and to review and comment on final versions of the documents worked on by the working group and subcommittees.

System Partnership Working Group: This group is comprised of representatives from WSIB, OWA and OEA, who seek to resolve service delivery issues that relate to our system partners. Meetings are held about 2 or 3 times a year.

Workplace Safety and Insurance Appeals Tribunal (WSIAT) Advisory Committee:
In 2006-07, the OWA participated in two meetings of the WSIAT Advisory Committee which includes the Chair and other senior WSIAT officials and members representing both the worker and employer communities. The meetings sought to resolve issues of mutual concern. In addition, the OWA and WSIAT held a separate meeting to deal with a narrower set of issues dealing with OWA appeals and processes.

Research Action-Alliance on the Consequences of Work Injury (RAACWI): The OWA continued its participation as a partner organization in this research partnership between university researchers and the injured worker community. As most individual research projects were in the planning stages, OWA's role primarily consisted of providing input and expertise on behalf of the injured worker community. The OWA also contributed to a review of the RAACWI by the international review panel examining the work of the Institute for Work and Health, the key academic sponsor of the project.

Formal Policy and/or Law Reform Submissions in 2006-07

WSIB Consultation on Draft Early and Safe Return to Work (ESRTW) Policies: The OWA wrote submissions in response to the Board's consultation on the second draft of its ESRTW policies.

The OWA supported the general intent and direction of the draft policies, made extensive comments and recommendations for improvements and reiterated its submission from the first round of consultation on the ESRTW policies regarding the need for more fundamental reform including legislative change and an alternative to the current experience rating programs.

Regulation of Paralegals: In 2006-07, the OWA continued its efforts to secure an exemption from regulation. In this regard, OWA made a written request to the Law Society of Upper Canada for a specific exemption for OWA to be included in the Law Society by-laws.

System and Community Partnership Committees and Activities

MPP Constituency Offices: The OWA offices continued to provide information and referral material to MPPs' constituency offices. OWA's local offices have developed and are maintaining good working relationships and referral processes with constituency offices.

Fatalities and Immediate Response (FAIR) Partnership: The OWA, the Workplace Safety and Insurance Board, Ministry of Labour Operations Division and a families' organization called Threads of Life continued an innovative partnership to improve services and supports to families of workers killed on the job. In June 1, 2006, the FAIR Partnership expanded its services from the Western Region to other parts of the province. The goal of the FAIR Partnership is to provide timely, seamless and comprehensive assistance to the survivors following a traumatic workplace fatality. Some of these families need immediate advice, referral and representation in dealing with the difficult impacts of losing a loved one to a workplace tragedy.

Canada Pension Plan Disability (CPP-D) Pilot: The CPP-D pilot project was phased-in 2006-07, with representation in the pilot offices commencing on April 1, 2006 and assistance with the completion of CPP-D applications for clients serviced by the pilot offices starting June 1, 2006. Pilot offices include Ottawa, Downsview, Hamilton, Sault Ste. Marie and Sudbury.

As part of the pilot implementation, a letter of understanding was signed by federal government Human Resources and Social Development Canada, WSIB and the OWA. Further, an evaluation framework for the pilot was developed jointly between the three participating parties. Training of staff with respect to the completion of CPP-D applications, the CPP-D/WSIB interface and OWA pilot procedures was completed during this fiscal year.

An initial analysis of the CPP-D pilot was completed at the end of the second and third quarters. The number of injured workers involved in the pilot remained modest. A year end analysis will be completed early in the new fiscal year. The pilot is scheduled to continue until March 31, 2008.

***Workers in Critical Need and in Crisis*:** This committee, which includes the Board, Ministry of Labour, WSIAT and the OWA, developed a protocol for expediting adjudication, hearings and/or decisions for workers in crisis. The protocol tries to limit gaps in service and prevent urgent cases, for those vulnerable workers in crisis, from falling through the cracks. Such cases are to be handled according to the protocol developed and agreed to by the committee members.

***Family / Peer Support Working Group*:** This group, which includes the WSIB, Threads of Life, Hydro One, Electrical Burns Victims, Injured Workers Outreach Services and the OWA, reviews issues related to severely disabled workers and tries to limit gaps in services.

Seriously Injured Workers: A working group consisting of WSIB, the OWA, the Ontario Federation of Labour, Legal Clinic System and the Building Trades unions was established to address issues of concern to seriously injured workers. The group is working to provide guidance to WSIB adjudicators in deciding referral criteria to the program and best practices for adjudication.

A working paper was developed and provided to the Workplace Safety and Insurance Board. A working group with WSIB was convened to address some of the concerns. Projects being considered by the working group include a best approaches type document for use by Claims Adjudicators, revisions to the Board's "Guide to Independent Living" and discussion aimed at resolving some of the troubling aspects of the Serious Injury Program.

(2) OWA TRANSFER PAYMENT PROGRAM

The OWA administers a transfer payment funding program for the Building and Construction Trades Council Training Program (PBCTCO), which supports education and training in workplace insurance.

OWA reviews and approves the PBCTCO Annual Business Plan and manages the transfer payment program through the administration of an annual Service Level Agreement, which includes performance measures, training outcomes and financial reporting requirements on a quarterly basis. OWA assesses the training outcomes against the actual year-end performance measures and financial reports. Year-end audited statements are required prior to approval of payment for the following year. The Minister of Labour, as part of OWA's Business Plan submission, approves the Transfer Payment Program as well as specific funding for PBCTCO.

The purpose of the PBCTCO program is to develop and deliver workplace insurance training that is specific to the needs and concerns of the construction sector in training its members in workplace insurance and early and safe return to work. The key objective of the program is to strengthen workplace insurance self-reliance among the construction unions.

The PBCTCO funding program also provides extensive mentoring and support to trained representatives, which, combined with the formal training, results in significant increase in the number of cases handled by trained representatives.

(3) TECHNOLOGY AND INFORMATION MANAGEMENT IN SUPPORT OF CLIENT SERVICES

New Case Management System

In 2006-07, the OWA successfully deployed 2 releases of the web-based case management system (CMS) with the assistance of the Economics and Business Cluster (EBC). The new CMS was introduced in the previous fiscal year. These releases added many enhancements to improve workflow and the ability to assess agency performance. Also, the CMS was modified to provide some keyboard options to avoid the use of the mouse and to better enable the use of voice recognition software by OWA staff with disabilities.

In 2007/08, the CMS development will add document management functions and an external activities module. As well as being a true technology enabler for OWA staff, the new CMS infrastructure and interface ensures faster client service and reduces the overall cost of achieving results for OWA clients.

OWA Website: http://www.owa.gov.on.ca

The OWA Website contains over 800 pages, including an introductory OWA fact sheet in 21 languages. In 2006-07, the OWA added several new Fact Sheets and amended some content of the existing material to reflect changes in WSIB policies and regulations. The OWA also continued to add to the significant decisions section outlining the successful work of OWA staff on the behalf of injured workers and their survivors.

Knowledge Management

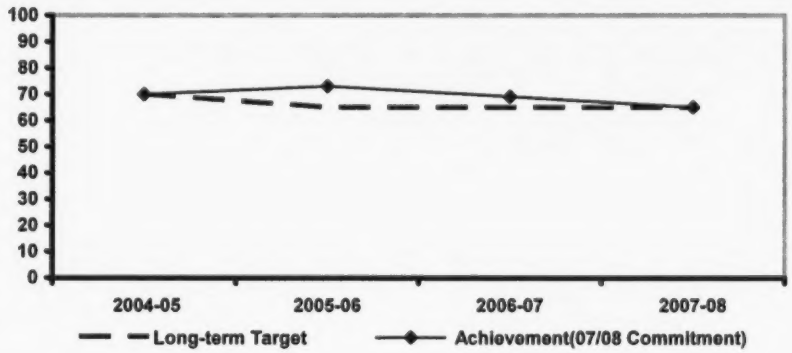
The OWA creates a significant amount of case and appeal related materials, which have the potential for generic use, contributing to more efficient case preparation.

In 2005/06, the OWA developed a web-based knowledge management system to replace the manual index of research materials. An electronic catalogue of research materials significantly increases knowledge retention and knowledge transfer within the organization. Much of this material is full text and replaces duplicate paper copies filed in individual offices. During 2006/07, new legal and medical resources were added to the data base. In 2007/08, the OWA will explore options for providing community and system partners' access to the library database.

APPENDIX A – OUTCOME PERFORMANCE MEASURE

Performance Measure #1: Early and Alternative Dispute Resolution

Percentage of Decisions Obtained by EDR or ADR



Agency Contribution

- The OWA's focus is to provide support for early and safe return to work and for early resolution of disputes without recourse to formal hearings, by diverting cases from the appeals system and finding alternative dispute resolution at the appeals level.

What does the graph show?

This graph shows the proportion of decision results on OWA appeals that were achieved without formal hearings. The long-term commitment was revised in 2004/05, reflecting changes in disputes resolved without a formal hearing – due to increased case complexity as well as number of appeal cases.

2006/07 Year End Performance Achievements

69% of all decisions were obtained by EDR or ADR, however, as the service delivery shifts to more complex representation, it is anticipated that the long-term target will remain at 65% of decisions to be obtained by EDR or ADR.

APPENDIX B – INTERNAL PROGRAM PERFORMANCE ACHIEVEMENTS

Measure	Standard/Long Term Target	2005-2006 Achievement	2006-2007 Commitments	2006-2007 Year End Achievements (as at March 31, 2007)
Early and Alternative Dispute Resolution	65% of all decisions to be obtained by early (EDR) or alternative dispute resolution (ADR)	Commitment Exceeded. OWA obtained 73% of all decisions by EDR or ADR	To obtain 65% of all decisions by EDR or ADR. Reviewing benchmark options for EDR and ADR that will reflect the revised service delivery approach and new Case Management System.	69% of all OWA decisions were obtained by early or alternative dispute resolution, however, as service delivery shifts to more complex representation, the long term target remains at 65%.
Effectiveness of advisory & representation services	150 cases per FTE	OWA achieved 140 issues resolved per FTE. This measure has been revised with the new Case Management System to reflect the number of issues resolved versus the number of cases handled per staff, including advisory and representation issues.	OWA increased its commitment to 150 issues resolved per FTE in 2006-07.	153 issues per staff were resolved, based on new case management system (CMS) statistics. Benchmarks for targets and commitments are being developed over the next two fiscal years.
Timeliness of Appeals Representation Service	Long Term Target 100% of all cases involving appeals representation service to commence within 120 days	2005-2006 Commitment was to achieve 50% of all cases involving appeals representation service to commence within 120 days. In 2005-2006 OWA exceeded commitment and achieved 87% of appeals cases commenced within 120 days.	2006-2007 Commitment to achieve 50% appeals cases commenced within 120 days. In 2007/08, OWA has revised commitment to 85% of appeals cases to be commenced within 120 days. OWA will review performance and develop benchmarks based on changes in service delivery model and the implementation of new CMS over the next two fiscal years.	Exceeded 2006-2007 Commitment, with 89% of appeals cases commenced within 120 days

APPENDIX C – FINANCIAL REPORT FOR ANNUAL REPORT – FISCAL YEAR 2006/2007

All Figures in $000.0 thousand

Account	Final Budget *	Total ** Actual Expenditures	Variance	Explanation
Salary & Wages	6,409.6	6,244.9	164.7	Surplus in S&W resulted from vacancy management and a decrease in estimated retroactive pay
Benefits	1,430.8	1,403.6	27.2	Decrease in estimated benefits resulting from associated decrease in retroactive pay
ODOE TOTAL	1,813.7	1,672.0	141.7	Reduction in CMS development charges and other travel expenditures
Transfer Payment	225.0	225.0	0.0	
OWA TOTAL	9,879.1	9,545.5	333.6	
Recoveries	(9,878.1)	(9,545.5)	(332.6)	
TOTAL	1.0	0.0	1.0	

* Final Budget = Printed Estimates +/- TBO, re-alignment of funds by standard account.
**Total Actual Expenditures including office lease cost.

APPENDIX D - OWA OFFICE LOCATIONS

TORONTO & EASTERN REGION

HEAD OFFICE & TORONTO OFFICE
Office of the Worker Adviser
123 Edward Street
Suite 1300
Toronto ON M5G 1E2

SCARBOROUGH OFFICE
Office of the Worker Adviser
2275 Midland Avenue
Unit 3
Scarborough ON M1P 3E7

MISSISSAUGA OFFICE
Office of the Worker Adviser
10 Kingsbridge Garden Circle
Suite #512
Mississauga ON L5R 3K6

OTTAWA OFFICE
Office of the Worker Adviser
11 Holland Avenue
Suite 705 Ottawa ON K1Y 4S1

SOUTHWEST REGION

LONDON OFFICE
Office of the Worker Adviser
495 Richmond Street
Suite 810
London ON N6A 5A9

HAMILTON OFFICE
Office of the Worker Adviser
119 King Street West
13th Floor
Hamilton ON L8P 4Y7

WINDSOR OFFICE
Office of the Worker Adviser
880 Ouellette Avenue
Suite #601
Windsor ON N9A 1C7

ST. CATHARINES OFFICE
Office of the Worker Adviser
301 St. Paul Ave. 9th Floor
St. Catharines ON L2R 7R4

NORTHWEST REGION

SAULT STE. MARIE OFFICE
Office of the Worker Adviser
70 Foster Drive
Suite 480
Sault Ste. Marie ON P6A 6V4

THUNDER BAY OFFICE
Office of the Worker Adviser
435 South James Street
Suite 335, 3rd Floor
Thunder Bay ON P7E 6S7

TIMMINS OFFICE
Office of the Worker Adviser
60 Wilson Avenue
Suite 303, 3rd Floor
Timmins ON P4N 2S7

ELLIOT LAKE OFFICE
Office of the Worker Adviser
50 Hillside Drive North
Elliot Lake ON P5A 1X4

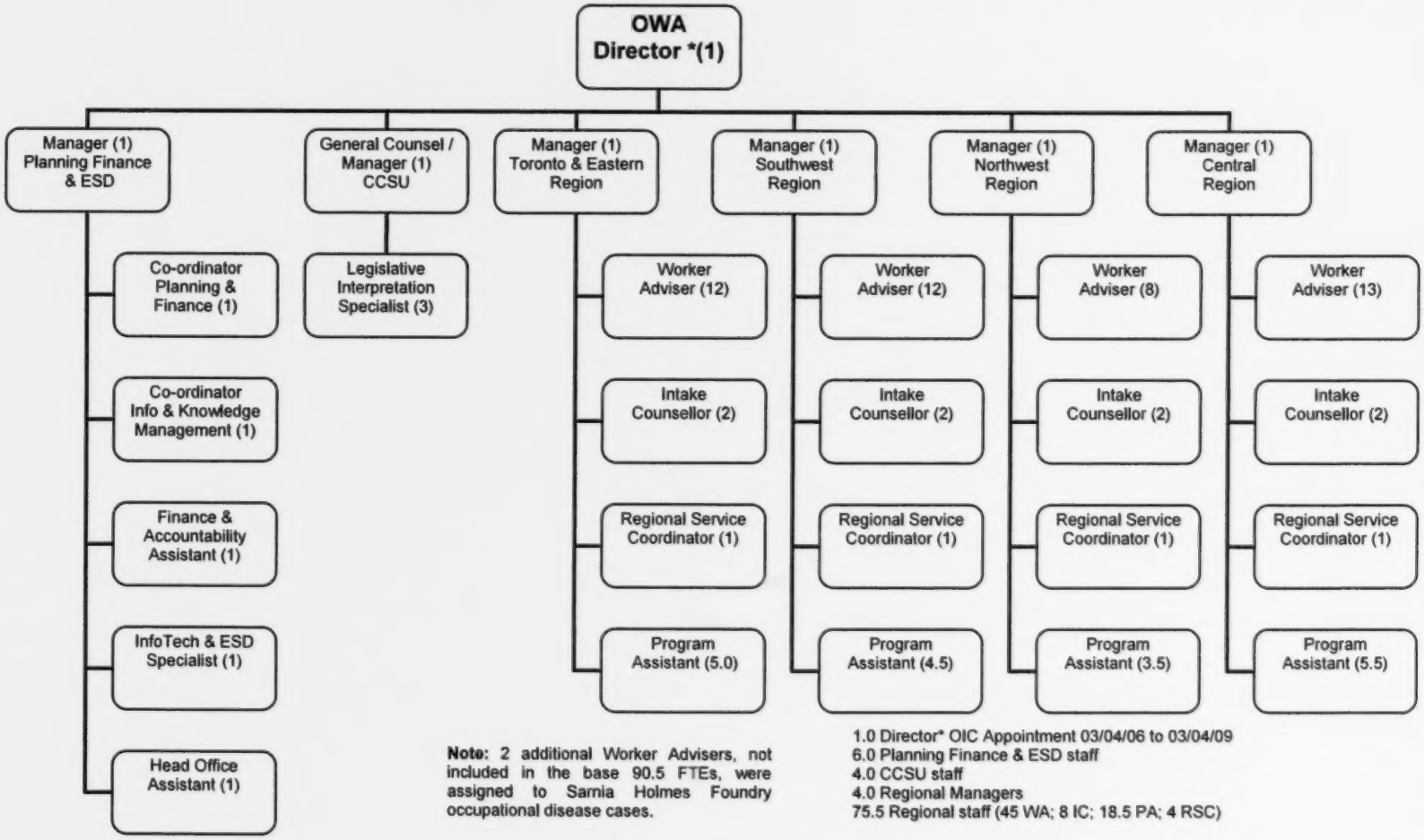
CENTRAL REGION

SUDBURY OFFICE
Office of the Worker Adviser
159 Cedar Street
Suite 304
Sudbury ON P3E 6A5

DOWNSVIEW OFFICE
Office of the Worker Adviser
1201 Wilson Avenue
Building C, Suite 125
Downsview ON M3M 1J8

WATERLOO OFFICE
Office of the Worker Adviser
155 Frobisher Drive
Unit G (213)
Waterloo ON N2V 2E1

APPENDIX E - ORGANIZATION CHART



Note: 2 additional Worker Advisers, not included in the base 90.5 FTEs, were assigned to Sarnia Holmes Foundry occupational disease cases.

1.0 Director* OIC Appointment 03/04/06 to 03/04/09
6.0 Planning Finance & ESD staff
4.0 CCSU staff
4.0 Regional Managers
75.5 Regional staff (45 WA; 8 IC; 18.5 PA; 4 RSC)